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## UNRESOLVED TENSIONS:

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### WARLPIRI LAW, POLICE POWERS AND LAND RIGHTS

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by Thalia Anthony and Robert Chapman

#### INTRODUCTION

This article explores the powerlessness of Indigenous people when confronted with police on ceremonial land. It draws on a recent incident in Lajamanu (northern Tanami Desert, Northern Territory ('NT')) that highlights the conflict between Indigenous and non-Indigenous laws. The incident involved an intrusion on a restricted Warlpiri ceremony ground by non-Indigenous police officers, including a female officer.

The incident brought to the fore questions regarding the legal rights of Indigenous people where there is a transgression of sacred sites under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Northern Territory Aboriginal Sacred Sites Act* (NT). It reveals the reluctance of the Anglo-Australian law to recognise Indigenous law and customary practice.

The NT Law Reform Committee's 2003 Inquiry into Aboriginal Customary law, found that 'the process of recognising customs and traditions, provides an opportunity for Aboriginal culture to grapple better with problems arising in contemporary society'.<sup>1</sup> One striking recommendation, among the Committee's generally modest calls for cultural training and the acquisition of knowledge on Indigenous law, was that 'Aboriginal customary law be recognised as a "source of law"'.<sup>2</sup> The incident at Lajamanu is a reminder of the importance of giving Indigenous law a recognised legal status.

This article also highlights the dynamic cultural and political strategies the community relied on in the absence of legal redress. The Lajamanu community's approach to developing mutual respect reveals a space where Indigenous and non-Indigenous laws can coexist.

#### THE SIGNIFICANCE OF CEREMONY IN WARLPIRI LAW

For Warlpiri people in Lajamanu, ceremony plays a central role in the transmission of cultural, legal and other knowledge. Ceremonies provide for rich and highly complex knowledge to be passed to those ready

and appropriate to receive it. Much of this knowledge is gender-specific; men and women have knowledge and ceremony that the other gender is forbidden to know or see. Warlpiri people in Lajamanu practice their ceremonies on sites that are forbidden to outsiders without an escort.

Male initiation ceremonies like the Kurdiji are rites of passage where boys begin the process of becoming men in accordance with Warlpiri law. Under Warlpiri law many phases of these ceremony cycles are strictly restricted to initiated men and the young initiates. Women, children and both Kardiya (non-Indigenous) and Yapa (Indigenous) visitors are prohibited. These ceremonies occur in the Lajamanu Warlpiri community every year around December and January over several weeks. Those in and around the community have long-known of their regular occurrence. As one senior man said, these ceremonies have occurred on a 'sacred place ... for many, many years'.<sup>3</sup> There is widespread recognition of, and respect for, these ceremonies.

#### POLICE INTRUSION ON WARLPIRI CEREMONY GROUND

When two police cars carrying five non-Indigenous officers, including one female officer,<sup>4</sup> drove onto a restricted ceremony ground in January 2008, the Lajamanu community became highly distressed. This was particularly due to the presence of a female police officer, which was a clear breach of Warlpiri law.<sup>5</sup> The Katherine-based police were attached to the traffic patrol and undertaking routine duties. There was no emergency that warranted the officers' intrusion.

The community has felt great anger, hurt and humiliation. Martin Japanangka from Lajamanu said, '[t]he whole community was very upset because the police just went ahead and did what they liked'.<sup>6</sup> Under Warlpiri law the presence of a woman in such circumstances requires immediate sanction; it is an unthinkable act for a Warlpiri person and is recognised as illegal under Warlpiri law. However, the Lajamanu people felt powerless

to halt the police officers. Being police officers, and non-Indigenous, the officers represented a system of imposed foreign authority and law that could have ruthless and unpredictable consequences for the Warlpiri community.

### **LAJAMANU COMMUNITY REACTS**

Deeply unhappy with this incident, senior Warlpiri men held a number of meetings to attempt to acquire recognition of this wrongful act. They decided to meet at an official level with government and publicise their concerns through both YouTube<sup>7</sup> and the national media. There was an expectation that the relevant Ministers and the Commissioner of Police would come to the community to discuss this grave crime, but no visit was forthcoming.

The police officers apologised to the community for their conduct and said that the entry on to the ceremony ground was unintentional.<sup>8</sup> However, the Lajamanu elders did not feel that the apology was sufficient atonement, considering the gravity of the offence.

The government also responded to the police 'trespass' by providing signs from the Aboriginal Areas Protection Authority ('AAPA') marked 'Ceremony Business in Progress'. A penalty of unauthorised entry is set at \$20,000. These signs are not commonly displayed in the Territory and community members had believed that the extant signs – 'Aboriginal land - no entry' – would have been a sufficient trigger for outsiders to request entry. Moreover, the effectiveness of such signs appears limited given the unwillingness to enforce sanctions on the police officers who intruded on the ceremony grounds.

In February, the community funded four Lajamanu law leaders to fly to Darwin to meet the 'non-Indigenous law' leaders: the NT Chief Minister and Police Minister, Paul Henderson, and the Indigenous Policy Minister and Deputy Chief Minister, Marion Scrymgour. This expensive exercise was a desperate attempt by the community to have the Kardiya system respect their laws and ceremonies. They sought to convey that ceremony and law are key elements of the five pillars of Warlpiri thought and culture, which also include land, kinship and language and are collectively referred to as *ngurra-kurlu*.<sup>9</sup>

In response to the community's request for respect of Warlpiri law, the Chief Minister vowed to visit Lajamanu to discuss ways to improve cross-cultural education.<sup>10</sup> However, this has not yet occurred and the Lajamanu community feel that their Darwin meeting was to no avail.

Instead, it has reinforced their feeling that their law and community are not respected.

The Warlpiri men nonetheless invited the Chief Minister and the Police Commissioner to attend a meeting to discuss the ramifications of the intrusion. This meeting took place in mid-May 2008 at Yuendumu, a community south of Lajamanu with a large Warlpiri population. The Commissioner attended, along with AAPA representatives including the CEO, an Arrernte member and an anthropologist. Also present at this well-attended meeting was Karl Hampton, the local (Indigenous) Member of NT Parliament. While the Commissioner spoke of 'moving forward' and 'working together', the Warlpiri representatives were dissatisfied with this response. They made it clear that they wanted to see meaningful punishment of the transgressing officers before they could move forward. They were also concerned with the non-attendance of the Chief Minister. Subsequently, the Warlpiri attendees formed a committee to decide on further action, such as lobbying the AAPA to prosecute the officers and visiting Canberra to urge the Commonwealth Government to put in place a system whereby Indigenous law could be recognised by non-Indigenous law.

### **LAJAMANU COMMUNITY CALLS FOR CROSS-CULTURE PROGRAMS**

The incident signalled to the Lajamanu community the pressing need for formal recognition of their law and culture. It is felt that recognition and respect would provide certainty that such an unwarranted violation would not recur.

Warlpiri people have been trying to come to an accommodation with Kardiya since contact and feel that they have tirelessly engaged with non-Indigenous culture and looked for mutual understanding and respect. The community sense that non-Indigenous culture remains at best indifferent to their culture and law and hostile at worst. As Martin Japanangka says:

Canberra is a sacred place, for government people to meet and people with authority, and we respect that. Why can't the police department and police women and men respect our sacred sites and our law?<sup>11</sup>

The Lajamanu community believe that respect for their law must come from cultural knowledge and understanding. Jerry Jangala believes that

[b]oth Aboriginal and non Aboriginal people need to recognise each others' laws. The government people need to recognise our law. We should talk about these things calmly and in good spirit.<sup>12</sup>

The community has also called for cultural training for police officers. Geoffrey Jungarrayi said after the incident: 'There should be a cross-cultural program where the police learn about our culture. Because at the moment I don't think that's happening'.<sup>13</sup> This 'training' would be part of the broader cross-cultural program at Lajamanu. Since 2005, members of the Lajamanu community have established, in conjunction with the Darwin-based Tracks dance company,<sup>14</sup> a cultural renewal and cross-cultural communication process called *Milpirri*. *Milpirri* has been a mechanism for preserving and adapting Warlpiri culture as well as opening it up to outside communities. It is a way, for example, of communicating the cultural significance of Kurdiji.

So far, there have been two performances, the first based on the Jarda-warnpa (atonement and reconciliation ceremony) and the second based on the Kurdiji (initiation ceremony, where the mothers give their sons to the men, who will give them the knowledge to guide them into adulthood). The next *Milpirri* performance will be based around the theme of law and order.

The *Milpirri* performances<sup>15</sup> are based on public or 'open' sections of Warlpiri ceremonies, with excerpts of song, dance and art performed in ceremonial style by adults and a modern hip-hop interpretation performed by younger people. All sections of the community participate in the *Milpirri* performance. Tracks coordinates the staging, works closely with Warlpiri on conceptual development and choreographs the western dance sections of the performance.

Whilst the culmination of the *Milpirri* process is a dance performance, the process of preparing the *Milpirri* performance takes well over 12 months and has been highly empowering for the Lajamanu community. This conceptual development, which involves deep thinking and re-imagining, is a vehicle to re-examine Warlpiri values and intellectual traditions in the light of the challenges of the contemporary world. It shows young Warlpiri that their own culture contains the resources to engage with the outside world while still maintaining their Warlpiri identity. For instance, the Kurdiji (or *shield*) ceremony teaches young men to take responsibility, to be open to learning new knowledge and to be a protector, or *shield*, for the land and the community.

*Milpirri* is also a means of reconciliation, seeking to share Warlpiri culture with Kardiya and demonstrating the common ground that the two cultures have. This is why

the police officers' intrusion on the Kurdiji was doubly hurtful, representing an unwillingness by police to engage and the ongoing disengagement of government.

## LAND RIGHTS AND POLICE POWERS

A more specific concern of the community was that the police were on land that belonged to them under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). They were concerned that they exercised no control over their land and had no redress for the trespass on their land.

Under section 4 of the *Aboriginal Land Act* (NT), permits are required for entry onto Aboriginal land.<sup>16</sup> However, the Act also identifies exemptions; including those for members of parliament.<sup>17</sup> Section 6 also provides, that the 'Minister may issue permits to certain government employees'. This gives the Minister carte blanche authority to provide all Territory and Commonwealth employees with permits, including the police. In the Northern Territory, this power appears to be exercised without discretion.

Accordingly, police generally have powers on Aboriginal land that they would have on public land. The conditions for entering private land – such as the possession of a warrant,<sup>18</sup> execution of an arrest or reasonable suspicion of an offence<sup>19</sup> – do not apply to police on Aboriginal land. Therefore, remedies for trespass under statute and common law are not available.

However, the exercise of police power on Aboriginal land is not unfettered. There is one important limitation – the prohibition of entry onto a sacred site. Under section 69 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and section 33 of the *Northern Territory Aboriginal Sacred Sites Act* (NT) it is an offence (with a maximum penalty of 12 months' imprisonment) to enter a sacred site, unless issued with an Authority Certificate. Sacred sites are defined broadly under section 3 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). They include any site that is

sacred to Aboriginals or is otherwise of significance according to Aboriginal tradition, and includes any land that, under a law of the Northern Territory, is declared to be sacred to Aboriginals or of significance according to Aboriginal tradition.

Therefore, sacred sites under the Act include registered and non-registered sites. Ignorance is no defence where an officer has reasonable suspicion that a particular site is a sacred site.<sup>20</sup> Consequently, the officers could not claim

that they were unaware that it was a sacred site in the context of a gathering that clearly indicated ceremonial activity.

The fact the police are subject to the *Northern Territory Aboriginal Sacred Sites Act* (NT) was reinforced in 2005, when s 4 of the Act was amended to 'clarify the liability of the Crown to prosecution'.<sup>21</sup> Section 4 now makes it clear that the Crown and the legislature are bound by this Act. Under s 39, the AAPA is the sole prosecuting body under the Act. It has thus far refrained from bringing a prosecution against the police over the January 2008 incident.

### ONGOING CALLS FOR RESPECT FOR CEREMONY

Notwithstanding the legal implications of police interference with their sacred sites, the Lajamanu community expect the police to respect Warlpiri law when it comes to entry into ceremony. They say that, had the police asked, they would have been escorted to the ceremony by the appropriate elders. One Lajamanu man expressed sentiments of respect for the role of non-Indigenous police officers, but said that it must be exercised within frameworks of cultural understanding. Joc Japanangka said:

We love some policemen. We like it that they come into our community. ... Because they are protecting us too.<sup>22</sup>

By the same token, the police should also 'respect Warlpiri law' by not interfering with ceremonies.

In 1986, the Australian Law Reform Commission ('ALRC') report on *The Recognition of Aboriginal Customary Laws*<sup>23</sup> noted that while some Aboriginal people saw the need for police in their communities, they also sought some control of their own. In particular, communities wished to be informed of police patrols entering the community, of police being called to disturbances and of persons being arrested.<sup>24</sup> The Commission cited the Report of the Groote Eylandt Aboriginal Task Force that recommended:

Prior to entering by the Police to an Aboriginal Community, the Community Council or one of its members, must be informed of the timing and purpose of the visit.<sup>25</sup>

The ALRC noted that consultation should be balanced 'against the requirement that the police be able to carry out their work efficiently and impartially. Yet there does appear scope for better communication between police and local communities'.<sup>26</sup> The Commission went on to suggest '[i]t may be helpful for guidelines to be drafted, in

consultation with the communities involved, instructing police of procedures to be adopted in such situations'.<sup>27</sup> Such guidelines should be regulated with enforceable sanctions where consultation is not adhered to in the course of routine police duties.

### CONCLUSION

The incident between the female police officer and the Lajamanu community signifies a much broader issue about the powerlessness of Indigenous law to defend or protect cultural heritage. Council deputy chairperson Geoffrey Jungarrayi said,

What the police woman did not only broke the law of Lajamanu Warlpiri men at Lajamanu; this law goes right across the Territory from the Top End, Central Australia, across the border to WA, South Australia even into Queensland.<sup>28</sup>

The guardians of the Warlpiri initiation ceremony feel deeply responsible for allowing this transgression to occur and for not setting things right. They feel that others involved in the ceremony and related ceremonies, stretching across four states, will be watching to see how the wrong will be remedied. The mothers also feel that a duty of care was not exercised over their sons by the initiated men. These deep tensions will only be resolved for the community when the police make an apology that is grounded in an understanding of the illegality of their act under Warlpiri law.

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1 Northern Territory Law Reform Committee, *Aboriginal Customary Law: Final Report* (2003) 36, <[http://www.nt.gov.au/justice/policycoord/documents/lawmake/intro\\_final\\_report.pdf](http://www.nt.gov.au/justice/policycoord/documents/lawmake/intro_final_report.pdf)> at 4 June 2008

2 Ibid recommendation 11.

3 Lajamanu Warlpiri community, 'Lajamanu and the Law',

YouTube, 15 January 2008, (interview with Joe Japanangka), <[www.youtube.com/watch?v=aU4m3bRyRqU](http://www.youtube.com/watch?v=aU4m3bRyRqU)> at 6 June 2008.

- 4 Tara Ravens, 'Outrage as police enter sacred site', *The Australian* (Sydney), 22 January 2008 <<http://www.theaustralian.news.com.au/story/0,25197,23092070-5006790,00.html>> at 6 June 2008.
- 5 Editorial, 'Police ignorance upsets community', *Indigenous Community News Network*, 22 January 2008 citing Lajamanu Community Council chairman Peter Jigili, <[http://icnn.com.au/index.php?option=com\\_content&task=view&id=595&Itemid=38](http://icnn.com.au/index.php?option=com_content&task=view&id=595&Itemid=38)>.
- 6 Lajamanu Warlpiri community, above n 3, (interview with Martin Japanangka).
- 7 '[The Lajamanu YouTube documentary represents] the first time that the importance of ancient aboriginal ceremonial tradition has been defended on YouTube': Margaret Simons, 'The Lajamanu Warlpiri community and the democratising power of YouTube', *Crikey*, 23 January 2008 <<http://www.crikey.com.au/media-arts-and-sports/20080123-the-lajamanu-warlpiri-community-and-the-democratising-power-of-youtube.html>> at 6 June 2008.
- 8 Ravens, above n 4.
- 9 Lajamanu Warlpiri community, 'Ngurra-kurlu', YouTube, 16 January 2008, <<http://www.youtube.com/watch?v=iFZq7AduGrc>> at 6 June 2008.
- 10 'Sacred site blunder to spark Chief Minister visit', *ABC News* (online), 21 February 2008. <<http://www.abc.net.au/news/stories/2008/02/21/2168772.htm>> at 6 June 2008.
- 11 Lajamanu Warlpiri community, above n 3, (interview with Martin Japanangka).
- 12 Ibid (interview with Jerry Jangaia).
- 13 Ibid (interview with Geoffrey Jungarrayi).
- 14 See <<http://www.tracksdance.com.au/>>.
- 15 Both performances were filmed. DVDs of the performance can be obtained from <[http://www.tracksdance.com.au/html/form\\_videos.html](http://www.tracksdance.com.au/html/form_videos.html)>.
- 16 Pursuant to the Northern Territory National Emergency measures, the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) was amended to insert ss 70B-70H that provide for public access to certain Aboriginal land. These provisions commenced on 17 February 2008. However, the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008 (Cth) repeals ss 70B-70H. This Bill is likely to pass in mid-2008.
- 17 *Aboriginal Land Act* (NT) s 7.
- 18 Under Part VII, Division 2 of the *Police Administration Act* (NT) 1978, search and entry onto land requires a warrant. Only in exceptional cases involving weapons, or on public places, can this requirement be circumvented.
- 19 The High Court has stated that a police officer will be liable for civil damages for trespass to land when entering another's property, unless the officer is entering for the purposes of arrest, to prevent a felony, or to execute a coercive process: *Plenty v Dillon* (1991) 171 CLR 635, 640-1 (Mason CJ, Brennan and Toohey JJ); and 647 (Gaudron and McHugh JJ).
- 20 The accused must have 'taken all reasonable steps to ascertain the location and extent of the sacred sites on any part of that Aboriginal land likely to be visited by him or her': *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) s 69(4)(b).
- 21 'In Your Parliament – NT Legislative Assembly: Legislation and Ministerial Statements and Reports, October 2005 Sittings - Summary Information on Bills Passed in the October 2005 Sittings' (2005), 4-5, <[http://www.nt.gov.au/dom/publications/in\\_your\\_parliament/2005/200510InYourParliament.pdf](http://www.nt.gov.au/dom/publications/in_your_parliament/2005/200510InYourParliament.pdf)> at 6 June 2008.
- 22 Lajamanu Warlpiri community, above n 3, (interview with Joe Japanangka).
- 23 Australian Law Reform Commission ('ALRC'), *The Recognition of Aboriginal Customary Laws*, Report No 31 (1986), <<http://www.austlii.edu.au/au/other/alfrc/publications/reports/31/>> at 10 June 2008.
- 24 Ibid [847].
- 25 Groote Eylandt Aboriginal Task Force, *Report* (1985) 28, cited in ALRC, above n 23, [847].
- 26 ALRC, above n 23, [847].
- 27 Ibid.
- 28 Lajamanu Warlpiri community, above n 3, (interview with Geoffrey Jungarrayi).

# Untitled

Janelle Stockman Napaltjarri

Acrylic on Linen  
3000mm x 2000mm

